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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

later: Mr. OGURTSOV
(Vice-Chairperson)

later: Mr. WEISSBRODT
(Chairperson)

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CONTENTS

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (continued)

The meeting was called to order at 10 a.m.

PREVENTION OF DISCRIMINATION:

(a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA;

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES;

(c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES (agenda item 5) (continued) (E/CN.4/Sub.2/2001/2, 15, 19, 20 and Add.1, 21 and 22; E/CN.4/Sub.2/2001/NGO/2 and 6; E/CN.4/Sub.2/AC.4/2001/4 and 5; E/CN.4/Sub.2/AC.5/2001/2 and 3; E/CN.4/Sub.2/AC.5/2001/WP.2, WP.3, WP.4 and WP.6; E/CN.4/2001/85)

1. The CHAIRPERSON said that, since the Sub-Commission was about to resume its discussion of his own preliminary report on the rights of non-citizens (E/CN.4/Sub.2/2001/20 and Add.1), he would relinquish the Chair.

2. Mr. Ogurtsov, Vice-Chairperson, took the Chair.

3. Mr. PARK said that the preliminary report had a consistent underlying theme, namely that, regardless of citizenship status, all persons should enjoy the fundamental human rights. It acknowledged the complex nature of the expression "non-citizen", which comprised a variety of persons having different social and legal entitlements. The range of those eligible for protection should be as inclusive as possible and it might be pertinent to examine the question of what being a non-citizen signified to different groups of people facing specific situations.

4. It would also be useful to look at the function of legal norms in the regulation of the relationships among non-citizens; in other words, the place of women, children and other vulnerable persons within their own groups. Moreover, the question should be examined what effective remedies were available under international human rights law if forms of injustice, including degrading and discriminatory practices, had been committed against non-citizens.

5. He supported all the tentative conclusions and recommendations in the preliminary report and particularly the need for the Committee on the Elimination of Racial Discrimination (CERD) to articulate the rights of individuals who were not citizens of the country in which they lived and to make more explicit the incorporation of protection for non-citizens.

6. As for the protection of minorities, the report of the Working Group on Minorities (E/CN.4/Sub.2/2001/22) constituted a model example of how a working group could function as a forum for constructive dialogue and productive results. As Chairperson-Rapporteur of the Working Group, Mr. Eide had played a key role in the formulation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and its final commentary, which should have a lasting impact on the protection of minorities.

7. Particular attention should be give to the very serious situation faced by minorities residing outside their own territory, whether temporarily or permanently, because they were often deprived of their basic human rights.

8. Mr. YOKOTA said non-citizens were very fragile people in current international relations because individuals were usually identified in terms of their personal relationship with a State through nationality. Consequently, when non-citizens needed State protection, it did not exist. United Nations human rights organs, such as the Sub-Commission, should thus pay special attention to the issue.

9. Nevertheless, the practical question arose of how to define the terms "citizenship", "nationality", "race" and "ethnicity". Two years previously, the lower court in Hamamatsu, Japan, had rendered a judgement to the effect that the owner of a jewellery store had caused mental injury to a Brazilian woman by requiring her to leave his shop on account of her nationality, and had ordered the owner to pay damages. The court accepted the plaintiff's argument that the shop owner's act violated the International Convention on the Elimination of All Forms of Racial Discrimination, assuming that the Convention applied to the case and also to relationships between individuals.

10. While he fully supported the judgement, he had a fundamental concern about the first assumption, because the case related to discrimination not on the basis of race or ethnicity but rather on that of nationality. Article 1, paragraph 1, of the Convention defined racial discrimination as meaning "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin" that impaired the enjoyment of human rights. That definition carefully avoided use of the term "citizenship", although the explicit mention of "national origin" could be interpreted as including citizenship, if citizenship, nationality and national origin were understood as having the same meaning. However, "national origin" usually had a different definition.

11. Thus, if that paragraph was interpreted in accordance with article 31 of the Vienna Convention on the Law of Treaties, which stipulated that treaty provisions must be faithfully interpreted in their usual meaning, distinction, exclusion, restriction or preference on the basis of citizenship did not mean racial discrimination, in terms of the International Convention on the Elimination of All Forms of Racial Discrimination. That interpretation was further strengthened by article 1, paragraph 2, of the Convention, which stipulated that the Convention would not apply to distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens.

12. It would appear from several of the cases referred to in the addendum to the preliminary report, that CERD took the view that discrimination on the basis of nationality was racial discrimination. He questioned the basis on which CERD had established its interpretation, however, in view of the provisions he had cited in article 1, paragraphs 1 and 2 of the Convention.

13. Mrs. DAES said she regretted that the Sub-Commission had insufficient time to consider such an important report as it deserved. She was in agreement with the tentative conclusions and recommendations and encouraged the Special Rapporteur to present his progress report

the following year. With regard to the concept of nationality, she suggested that it would be useful to refer to the work done by The Hague Conference on Private International Law.

14. Ms. MOTOC said that, to date, the preliminary report had simply outlined the legal framework of the issue. Chapter IV, section C related to the Charter of Fundamental Rights of the European Union, adopted in December 2000. However, before examining that instrument, the Special Rapporteur should have analysed the provisions that were previously in force, particularly article 8 of the Treaty Establishing the European Community. European citizenship had been introduced by the Maastricht Treaty on European Union and then revised by the Amsterdam Treaty and there was a very complete collection of case law regarding the citizen and the non-citizen. It would also be useful to analyse the current legislative framework of the European Union, since the issue of European citizenship had much to offer, particularly in connection with non-citizenship; for example, the relationship between a person's European citizenship and the citizenship of his or her own country could be illuminating.

15. Chapter IV, section D of the report analysed the European Charter for Regional or Minority Languages and observed that article 1 of the Charter differentiated between minorities and non-citizens (para. 143). In paragraph 147, other relevant developments in the Council of Europe were mentioned but they did not include the 1995 Framework Convention for the Protection of National Minorities, which was an important document because it had been ratified by most members of the European Union and also because many academic sources, when referring to it, had said that the concept of non-citizen was, at times, included within the concept of a minority.

16. Paragraphs 165-168 of the preliminary report referred to the Roma/Gypsies. A special group in the Council of Europe was working on that topic and there was a wealth of information available. Incidentally, the Roma had stated that they did not want to be called Gypsies; and she recommended that the Special Rapporteur should consult the Roma non-governmental organizations (NGOs) to determine what terminology should be used.

17. Mr. EIDE said he agreed with Ms. Motoc, concerning developments in the European context, in particular, since a very intensive debate was in progress on many of the questions included in the preliminary report. He also agreed with Mr. Yokota that the question of the difference between "citizenship" and "nationality" could be extremely confusing, since, although the definitions were somewhat more precise in international law, the terms had different meanings in different contexts and in different parts of the world. However, it was useful to start the report with a very clear premise that human rights were for everyone, whether citizens or non-citizens, and that each State was responsible for every person within its territory and under its jurisdiction, before determining and explaining the explicit exceptions for non-citizens.

18. A major concern that needed to be addressed was whether every person, including non-citizens, had access to effective remedies, because the latter were often uncertain in the case of non-citizens.

19. With regard to exceptions, the International Convention on the Elimination of All Forms of Racial Discrimination appeared merely to state that the Convention did not eliminate those exceptions that could be made under other international human rights instruments. Certain

exceptions could be made; for example, on the issue of political rights and on the right to leave a country and return to it. It would be useful to analyse what exceptions could be made with regard to economic, social and cultural rights and to examine the very ambiguous question referred to by Ms. Motoc concerning minorities and non-citizens, where the position adopted by the Human Rights Committee regarding article 27 of the International Convention on Civil and Political Rights was that minority rights extended to non-citizens.

20. Lastly, discrimination in the allocation of citizenship should also be examined. The issue had tremendous significance in the current debate in Europe, owing to the dissolution of large federations into smaller entities. The International Law Commission had addressed that issue and also the recent European Convention on Nationality.

21. Ms. HAMPSON said that the report contained a very thorough identification of the applicable legal norms and she looked forward to the next report on what actually happened in practice. In that regard, she wished to point out that the case law of the European Court and the former European Commission of Human Rights dealt with the rights of non-citizens in contexts other than deportation, such as immigration in order to marry. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms dealt with freedom of movement and appeared to recognize rather than grant what must, therefore, be an existing right of citizens or nationals to enter their country.

22. The issue of the right of entry of citizens who were excluded on racially discriminatory grounds had been found to constitute inhuman treatment in the case of East African and Asians. Issues had also arisen in relation to the prohibition of arbitrary detention and due process in relation to non-citizens; for example, a legitimate ground for detention was that action was being taken with a view to deportation and States appeared to have a wider discretion in that respect than when detaining on other grounds. The Commission had initially held that decisions on immigration or deportation were civil matters and therefore subject to the due process guarantees of article 6, but the European Court had for some years held that they involved public law and were therefore outside the protection of that article.

23. The treaty provisions, regulations and directives of the European Economic Community (EEC) and European Union law had had a profound impact on the question of the rights of non-citizens; a significant volume of case law also existed. When entering the EEC, the United Kingdom had been required to define who its citizens were for the purposes of EEC law. The preliminary report assumed that there were nationals or citizens and non-nationals or aliens. The former had one set of rights and the latter a more restricted set of rights. Although that was generally true, the case of the United Kingdom was rather more complex, since citizens of Commonwealth countries - who were British subjects - had less rights that citizens, but more rights than aliens.

24. Turning to the report of the Working Group on Minorities (E/CN.4/Sub.2/2001/22), she noted that the minorities covered fell into three broad categories: minorities with a distinct culture, language and religion, with a clear sense of identity and associated with a particular territory; religious minorities; and linguistic and/or cultural minorities spread over many parts of the territory. The question that arose, in the case of groups of Hungarian origin in

Eastern European States, for instance, was whether such groups should be regarded as a minority if minority status was to be denied to groups of immigrants who had been settled long enough to be entitled to citizenship.

25. She would also like to raise the issue of membership of and expulsion from a minority group. If the State made special provision for members of such a group, the question arose whether an individual could decide to renounce membership and, conversely, who was to decide in respect of applications for membership which were opposed? She suggested that the Working Group might consider that question, referring to the relevant case law of the Human Rights Committee.

26. Ms. SARDENBERG said the rights of non-citizens was a complex subject with many different dimensions, including a political dimension. The report marked an important step forward in the consideration of the subject, both by the Sub-Commission and by the United Nations system as a whole.

27. She wished to highlight certain of the preliminary report's tentative conclusions. The first was that, despite existing standards, violations still occurred and there was room for improvement at all levels, including the legislative. The second was that there was need for more information from Governments, NGOs, United Nations agencies and intergovernmental organizations. She supported the suggestion that all interested parties should be consulted on the actual situation facing non-citizens in the various countries. The third conclusion was that there was need to raise public awareness of the issue and to increase its political visibility. The 1985 Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live, the text of which was virtually unknown, should be publicized, notably through inter-agency coordination and through the concluding observations of the treaty bodies.

28. The report noted that the concluding observations of the Committee on the Rights of the Child had often expressed concern at the negative impact of non-respect for the rights of non-citizens on enjoyment by children of their other rights, such as the right to health and education. Experience had shown that that was an area in which States parties were reluctant to provide information and to acknowledge instances of discrimination.

29. Regarding the possible withdrawal of CERD General Recommendation II and its replacement by a new draft, she suggested that the recommendation should be retained as a reflection of a particular historical situation, but that CERD should be encouraged to draft a new recommendation on the subject, taking into account recent developments.

30. Mr. SIK YUEN, referring to the case of gender discrimination referred to in paragraph 25 of the addendum to the report (E/CN.4/Sub.2/2001/20/Add.1), said that Mauritian immigration law had since been changed and that the lady mentioned here, Shirin Aumeeruddy-Cziffra, had since become Minister for Women's Affairs, and had been instrumental in bringing the relevant bill before Parliament.

31. Mr. GÓMEZ-ROBLEDO VERDUZCO said that the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 was a major step forward in that it included the crucial right of such workers to equal treatment with

nationals regarding working conditions and remuneration, and it was incredible that, up to May 2001, only 16 States had ratified or acceded to it. In view of the fact that the Member States of the United Nations currently numbered some 190, and that the Convention had been open for signature for more than 10 years, the picture was, indeed, a discouraging one.

32. It was true that, since only 20 more ratifications were required, the Convention would come into force fairly soon, but the majority of industrialized countries unfortunately wanted nothing to do with it. That was most alarming, since it was precisely those countries which were needed to make the Convention effective. Without their participation, it would remain a dead letter. Inequality in the effective enjoyment of rights was all the more unacceptable in that it contradicted the basic concept of human rights.

33. Mr. KARTASHKIN said that the question of the difference between nationality and citizenship had been raised by a number of speakers. Whereas the two concepts were the same in many countries, in others they were differentiated. The Russian Federation in fact made a distinction between citizens, non-citizens, and what were referred to as compatriots. After the collapse of the Soviet Union, some 25 million Russians had found themselves inhabiting one or other of the newly-created sovereign and independent States of the Federation. Some had obtained citizenship of the State in which they lived, others had become citizens of Russia, and a third category remained non-citizens. The situation of the latter category gave rise to some concern.

34. Some 105 States had ratified the International Covenants on Human Rights. Those instruments made no distinction between citizens, non-citizens and other categories, referring to rights to be enjoyed by "everyone" or "all persons". The sole exception was article 25 of the International Covenant on Civil and Political Rights, which defined certain political rights as rights to be enjoyed by "every citizen".

35. The Sub-Commission should emphasize that States had an obligation to do their utmost to guarantee the full range of human rights to non-citizens as well as to citizens.

36. Mr. GUISSÉ having congratulated Mr. Weissbrodt on an exhaustive preliminary report which shirked none of the many problems involved, said that the norms set out in existing international human rights instruments were very wide in scope and covered virtually every aspect of life. Consequently, to addressing the subject of the rights of non-citizens was focusing attention on a small island in an ocean of recognized rights. What was needed was rather action to promote human rights in general.

37. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was applicable to the case of persons who had left their own countries and were most in need of protection, but that Convention had never been implemented by the developed countries. He was unable to see in what way the rights of non-citizens could differ from rights that had already been defined, and considered that further definitions of such rights would be useless in the absence of a strong political will in host countries to respect them. The problem would become even more serious if an obligation to discriminate on grounds of birth or place of origin were created. The development of yet another instrument would add nothing to the protection of the human rights of non-citizens.

38. Mr. WEISSBRODT, replying to Mr. Kartashkin, said that what he had intended to do was review the legal provisions that existed, and the way in which they were interpreted in particular countries, such as Estonia and Latvia, at a particular time. His preliminary report did not purport to give an account of the actual situation throughout the world. The concluding observations of the Human Rights Committee (E/CN.4/Sub.2/2001/20/Add.1, paras. 49 and 50) reflected the situation in Estonia in 1995, but not the current situation. He had tried to identify particular determinations by human rights bodies in order to help the Sub-Commission understand the law, rather than in order to review the situation facing non-citizens generally.

39. In response to Mr. Park, he said that, in the future, he intended to look into the important issue of vulnerable groups such as women who had lost their nationality because of divorce, and children whose nationality had not been adequately recorded. In reply to Mr. Yokota, he referred to article 1, paragraph 3, of the International Convention on the Elimination of All Forms of Racial Discrimination, which stated that nothing in the Convention was to be interpreted as affecting the legal provisions of States parties concerning nationality provided that such provisions did not discriminate against any particular nationality. The incident Mr. Yokota had mentioned appeared to involve discrimination against a Brazilian, which clearly would have been forbidden under the Committee's jurisprudence.

40. He agreed with Mrs. Daes that a reference to The Hague Convention ought to be added, and looked forward to further information from her on the subject of trafficking. He was grateful to Ms. Motoc for her observations on the European Union, and would be glad of her assistance on minority issues in that context.

41. He endorsed Mr. Eide's point that it should be the exception that persons in certain categories were deprived of certain rights, such as the right to vote. Ms. Hampson's distinction between four categories, British citizens, British subjects, aliens and Irish, illustrated the complexity of the situation prevailing in a particular country, a situation which would appear to conflict with the provisions of human rights instruments which that country had ratified. It was his task to try to resolve the contradictions created by the conduct of Governments.

42. He was grateful to Ms. Sardenberg for supporting his conclusions, and agreed that more facts were needed and that the 1985 Declaration needed to be publicized. He particularly appreciated her advice that General Recommendation 11 should not be withdrawn, but that a new general recommendation on the same subject should be formulated. In response to Mr. Gómez-Robledo Verduzsco, he pointed out that only four more ratifications were needed to bring the convention in question into force, thus creating a new body of treaty law that should eventually have a positive impact on the situation.

43. The assignment he had been given was an exacting one, and he appealed to Governments, NGOs and colleagues for contributions that would help him fulfil it. He would try to cover the subject in a more systematic way in his next report.

44. Mr. Weissbrodt resumed the Chair.

45. Mrs. DAES, introducing her final working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21), said that all the information and comments

submitted by Governments, indigenous peoples, NGOs and international organizations, had been gratefully received. She drew attention to the doctrine of terra nullius, referred to in paragraph 128, and its damaging effects on indigenous peoples. Such discriminatory ideas continued to be evident in legal theory and practice, and indigenous peoples often remained trapped in a legal discourse that did not embrace their distinct cultural values and perspectives. The greatest single problem for indigenous peoples in the contemporary world was the failure of States to demarcate indigenous lands. As a result of that failure, the purely abstract or legal recognition of indigenous lands and resources could be practically meaningless.

46. The working paper illustrated the need for a flexible approach to the consideration of indigenous peoples and their relationship to land, as well as the urgency of the search for solutions to long-standing problems. It should be stressed that indigenous peoples had a profound, spiritual and material relationship to their land and resources, with various social, cultural, spiritual, economic and political dimensions.

47. With a view to facilitating solutions to complex problems, she had devised a set of fundamental guiding principles, based on the conclusions in paragraphs 118 to 143, for measures affecting indigenous peoples. Lastly, paragraphs 145 to 164 contained a number of recommendations addressed to States, the United Nations system, indigenous peoples and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

48. Mr. YIMER said that the working paper produced by Mrs. Daes was so thorough that it would be more appropriate to call it a study. As the recent creation of a Permanent Forum for Indigenous Peoples had demonstrated, the issue of indigenous peoples and their relationship to land needed to be a priority item on the agenda of the international community. Drawing attention to various parts of the working paper, he emphasized the point made in paragraph 13 that it was virtually impossible to separate the concept of indigenous peoples' relationship to their lands, territories and resources from that of their cultural differences and values. He highlighted the importance of the fundamental guiding principles in paragraph 144, particularly those in subparagraphs (a), (b), (c), (d) and (e).

49. Mr. EIDE said that the contribution by Mrs. Daes was much more than a working paper; it was the culmination of a lifelong study. He highlighted the role played by John Locke in the development of doctrine concerning the ownership of land. Locke had elaborated a notion of property which guaranteed the rights of individual property owners but had a detrimental impact on community rights. That notion had provided the theoretical framework for colonial powers, which held that the absence of individual proof of ownership meant that land belonged to nobody and was therefore available for colonization. The principles advocated by Mrs. Daes constituted a re-examination of the most basic tenets of ownership, and was an attempt to change the legacy of Locke's work.

50. Mrs. WARZAZI, having paid tribute to the tireless efforts of Mrs. Daes to raise awareness of the problems experienced by indigenous communities, said that Governments could no longer be allowed to ignore their responsibilities with regard to the enhancement of the status of indigenous peoples. She drew attention in particular to subparagraph (a) of the

fundamental guiding principles elaborated in paragraph 144 of the working paper, in which it was stated that the rule of law must be rigorously established and maintained in every country with respect to indigenous peoples and their lands, territories and resources.

51. Ms. MOTOC said that the working paper constituted a model for the work of other Sub-Commission experts. It was particularly valuable because of the impact it would have in all fields, ranging from the political to the academic. The Working Group on Indigenous Populations had already requested Mrs. Daes to carry out a further study on indigenous peoples' permanent sovereignty over natural resources.

52. Mr. van HOOF said he associated himself with the previous speakers who had praised Mrs. Daes' fine working paper and unremitting efforts on behalf of indigenous peoples. It was to be hoped that the fundamental guiding principles regarding indigenous peoples' lands, territories and resources would be fully incorporated into international law and that the recommendation in paragraph 157 for the establishment of a fact-finding body or the appointment of a special rapporteur with "peace-seeking" powers would be implemented.

53. Mr. GUISSÉ said he was indebted to Mrs. Daes for teaching him most of what he knew about indigenous issues. Nobody was better qualified to study the relationship of indigenous peoples to land; her work would be highly appreciated by future generations of students.

54. Mr. YOKOTA said that it was largely thanks to Mrs. Daes that the rights of indigenous peoples formed part of the mainstream of human rights studies and discourse. Indigenous peoples all over the world had become aware of their rights and, sustained by renewed confidence and self-respect, had begun to assert them. Mrs. Daes was uniquely qualified to write a scholarly and yet realistic working paper on such a sensitive political issue as the right to lands, territories and resources, which were crucial to the identity of indigenous peoples but had been seized from them again and again throughout history. It was time for States to recognize that the right to lands, territories and resources was the source of indigenous peoples' right to development and the wellspring of their culture and shared historical experience.

55. Mr. PARK said that Mrs. Daes had earned the high esteem of the international community for her work on behalf of indigenous peoples. He warmly commended her final working paper, which was the culmination of years of personal dedication. The possession of land was a prerequisite for indigenous peoples' full enjoyment of their right to a decent living and of the right of self-determination, particularly in terms of preservation and enhancement of their economic, social, cultural, spiritual and political identity.

56. It had been recognized that a legalistic and positivist approach would merely perpetuate the injustices suffered by indigenous peoples through the forcible and fraudulent acquisition of their land. The so-called principle of terra nullius, which survived in some cases as an insurmountable barrier to the realization of their legitimate claims, was too vague to be recognized as an established principle of international law. Indeed its validity as a legal norm should be subjected to scrutiny, particularly in the light of evolving human rights law.

57. The message of the working paper on indigenous peoples and their relationship to land should be brought to the notice of Governments, international institutions and the indigenous

peoples themselves. He recommended that due consideration should be given to the shared experience of indigenous peoples in all countries where they had been victimized. Wider access to information and legal advice should be provided to indigenous peoples in their negotiations with Governments and institutions, and action should be taken to promote the sharing of experience and dissemination of expertise among the indigenous peoples themselves.

58. He fully endorsed the conclusions and recommendations contained in the report.

59. Ms. HAMPSON said that, when reading Mrs. Daes' comprehensive and fascinating working paper, she had been struck by the fact that the significant progress made over the past decade in dealing with indigenous issues had been accompanied by some appalling developments. While lack of awareness of indigenous issues might have served as a mitigating factor in the past, there was no such excuse for any of the adverse measures adopted in the past decade. It often seemed to be a case of economics prevailing over human rights. One particularly startling example was that of a State that had introduced excellent legislation but had then not only failed to implement it but had engaged in activities inconsistent with indigenous rights and had not prevented others from doing so also.

60. The resolution adopted by the Sub-Commission earlier in the session on the wrongs resulting from slavery, colonialism and wars of conquest might contain material of use to indigenous peoples. Moreover, a resolution on the right of return to be submitted later in the session, contained some provisions on the restoration of infrastructure that might be of interest to displaced indigenous peoples.

61. Mrs. DAES, Chairperson-Rapporteur of the Working Group on Indigenous Populations, introducing the report of the Working Group on its nineteenth session (E/CN.4/Sub.2/2001/17), said that the attendance, by over 1,000 participants, including representatives of about 70 Governments, had been unique in the history of United Nations working groups. The main theme had been indigenous peoples and their right to development, including their right to participate in development affecting them. Other issues discussed were globalization and the meaning of the concept of sustainable development for indigenous peoples. The Working Group had adopted a number of recommendations and had assigned members the task of preparing working papers for submission to the next session on issues deemed to be of special importance.

62. On behalf of the Working Group, she had prepared two working papers, concerning racism against indigenous peoples and ways of combating such racism, for distribution at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. A great many representatives of indigenous peoples planned to attend the World Conference. They had requested the Working Group, the Office of the High Commissioner for Human Rights (OHCHR) and Governments to facilitate their participation. The expenses of 79 participants would be covered by the United Nations Voluntary Fund for Indigenous Populations. She had appealed to the international community to continue to contribute to that Fund and to the United Nations Voluntary Fund for the International Decade of the World's Indigenous People, which had helped to finance a number of important projects on behalf of indigenous communities throughout the world.

63. Mr. RODRIGUEZ-CUADROS, having associated himself with the previous speakers who had commended the commitment of Mrs. Daes to the campaign for recognition of the rights of indigenous peoples, said that the next stage in the campaign was to secure international recognition of those rights. Unfortunately, it was still proving difficult to reach agreement on a draft United Nations declaration on the rights of indigenous peoples or on declarations or legal instruments at the regional level. But some form of binding or non-binding commitment among States was the only way of securing positive action to enforce the rights concerned.

64. However, two encouraging developments had recently taken place in the Americas. The working group on the draft inter-American declaration on the rights of indigenous peoples had agreed to use the term "indigenous peoples" rather than "indigenous populations". Secondly, the Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela, the member countries of the Andean Community, meeting in Machu Picchu, Peru, on 29 July 2001, had adopted the Machu Picchu Declaration in which they had recognized the term "indigenous peoples" and had undertaken to respect and promote indigenous rights, including the right to resources and lands, and to develop community programmes for the promotion and defence of those rights. The Presidents had also set up, within the Andean Community, a standing forum of representatives of States, indigenous organizations and human rights NGOs and other organizations of civil society to discuss the situation of indigenous peoples in the Andean region and to monitor implementation of the provisions of the Declaration.

65. Mr. SORABJEE, having complimented Mrs. Daes on her erudite and balanced final working paper on indigenous peoples and their relationship to land, said that he particularly welcomed the chapter of the report of the Working Group on Indigenous Populations entitled "Standard-setting activities, including a review of indigenous peoples' relationship with natural resource, energy and mining companies". Indigenous rights were being violated in covert ways by such companies and their practices should be subjected to closer scrutiny.

66. The apprehension expressed in paragraph 87 of the report that the Indian Government planned to amend the fifth Schedule, and even the Constitution, to the detriment of the indigenous peoples of India, was totally unfounded. He would himself be the first to oppose any such plan.

The meeting rose at 1 p.m.